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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on: 22.10.2019

+ MAC.APP. 465/2018

NATIONAL INSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Adv.

versus

JAHIDA & ORS Respondents
Through: Mr. Kunwar Pal Singh, Adv.
Mr. Anjum Javed, ASC.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 23.02.2018 passed by the learned MACT in MACT No. 268/2017, insofar as the appellant has been granted right of recovery, but the appellant seeks discharge from payment of any liability on the ground that the premium apropos the insurance policy was never received because the cheque issued for the same was dishonoured. It is stated that the notice of dishonour of the cheque had been posted by the appellant to the insured and the policy had been cancelled. However, the learned counsel for the appellant is unable to show any proof apropos the posting of the said notice.

2. The Court would note that the *lis* then primarily would be between the owner of the vehicle and the insurer. If it is found that the owner of the vehicle had not paid the premium amount and he was duly intimated about

the same, the insurer would have the right of recovery against the said insured. The right of recovery has already been granted against respondent nos. 8 & 9, i.e., driver and the owner respectively.

3. The appellant contends that the impugned order is bereft of discussion of the manner in which the Motor Vehicular accident occurred. The relevant portion of the order reads as under:

“...8. To succeed in the claim petition in view of Section 166 of the MV Act, it is for the claimant to prove that vehicle which caused the accident was being driven rashly and negligently by its driver. Wife of deceased i.e. petitioner No. 1 deposed about the facts of the case. She was cross-examined by ld. Counsel for respondents and during cross-examination nothing has come forward in her testimony to disbelieve the version of PW. On the other hand, the testimony of RW did not rebut the testimony of PW to deny the claim of the petitioner and mere denial is not sufficient to rebut the claim of the petitioner. No witness was produced or examined by respondents as well to prove as to how accident occurred due to the negligence of the deceased; the respondent No.1 was not at fault and was not driving the vehicle in rash and negligent manner. There is no reason to disbelieve the testimony of witnesses. I have gone through the record and documents in respect of the accident caused to the petitioner which is prima facie suggestive of negligence of respondent No.1 in driving the vehicle at the time of accident....”

4. The Court is of the view that *ex facie*, there is lack of adequate discussion of the manner in which the Motor Vehicular accident happened, nevertheless the said decision could be only in the context of the records before the learned Tribunal. The claim petition had set out a case of unfortunate death of the deceased in the motor vehicular accident involving the offending vehicle. The death happened on 28.02.2017. The FIR was

registered in this regard on the same day, as FIR no. 39/2017 at Police Station Mandamarri, Distt. Manchiryal in the State of Telangana (marked as Exh. E) (page 325 of the LCR). It clearly records the manner in which the accident had occurred. The same narration forms the basis of the claim petition. The accident report from the Motor Vehicles Inspector (page 271 of the LCR) shows a link with the demise of the deceased was by the offending vehicle, the vehicle had suffered damages.

5. The Court records the cause of death and the fatal injuries caused on account of motor vehicular accident. The motor vehicle having been identified, there is no cause for modifying the said order except to the extent that the appellant shall pay an additional amount of Rs. 6,30,000/- along with interest accrued thereon in terms of the order dated 01.10.2019 which had recorded:

“...The Court would note that, in terms of the dicta of the Supreme Court in Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors. 2018 SCC OnLine SC 1546, each of the claimants would be entitled to compensation towards 'loss of consortium' @ Rs.40,000/- and towards 'loss of love and affection' @ Rs. 50,000/-. There were seven claimants before the Court. Albeit, the mother-in-law has since passed away, nevertheless, she did suffer both 'filial loss of consortium' as well as 'loss of love and affection' of the deceased son, so did his father. The father would be entitled to the compensation atleast for an amount of Rs. 90,000/- under both the aforesaid heads. Accordingly, the awarded compensation is enhanced in the following manner:-

i) 'loss of consortium' Rs.40,000/-x7 = Rs. 2,80,000/-.

ii) 'loss of love and affection' Rs.50,000/-x7= Rs. 3,50,000/-.

Total: Rs.6,30,000/-.

In the circumstances, the aforesaid enhanced amount shall be payable to the claimants, alongwith interest @9% per annum from the date of filing of the Claim Petition till its realization, in terms of the scheme of disbursement as specified in the Award.
....”

6. The enhanced amount of Rs. 6,30,000/- shall be deposited before the learned Tribunal alongwith interest @ 9% from the date of filing of the Claim Petition till its realization, within three weeks from the date of receipt of copy of this order, to be released to the beneficiaries of the Award, in terms of the scheme of disbursement/apportionment specified therein.

7. The appeal is disposed off in the above terms. The statutory amount shall be adjusted towards the payment of the additional amount.

8. In terms of this Court's order dated 01.10.2019, the respondent no.1 was directed to be released an amount of Rs. 1,00,000/- in two instalments of Rs. 50,000/- each on 05.10.2019 and 05.11.2019. These monies have not been received by her. In the circumstances, in addition to the aforesaid Rs. 1,00,000/-, let another amount of Rs. 1,00,000/- be released to her for the maintenance of her two minor sons, namely Zeeshan and Ahsan as well as for taking care of her family. Rs. 40,000/- shall be deducted from the account of each of the beneficiaries of the Award. The said amounts shall be released directly into the Bank Account of respondent no.1- mother, bearing Account No. 1031754375, IFSC Code: CBIN0281278 maintained with Central Bank of India, Ghonda Village, Maujpur, delhi – 110 053.

9. The elder son Harun, is stated to be 20 years of age and is mentally ill. He requires regular treatment and was earlier treated at Institute of Human Behaviour and Allied Sciences (IHBAS), Dilshad Garden, Delhi. In the

interim, because of the financial constraints and misplaced advice of the applicant's well-wishers, the treatment was discontinued. However, treatment at a Government hospital is largely free. In the circumstances, let the mother and her son Harun appear before the Director of the prestigious IHBAS for further treatment on 18.11.2019.

10. The learned ASC for the Government of NCT of Delhi has been called and informed of the said directions. He assures the Court that the matter shall be promptly looked into and due medical care shall be accorded to the said person.

11. A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master. A copy of this order be also sent to the Manager, UCO Bank, Karkardooma Courts, New Delhi, for compliance.

OCTOBER 22, 2019/kk/ab

NAJMI WAZIRI, J